***UNITED STATES DISTRICT COURT***
***DISTRICT OF MAINE***

| | | |
|---|---|---|
| ***WILLIAM J. SENGEL,*** | ***)*** | |
| | ***)*** | |
| ***Plaintiff*** | ***)*** | |
| | ***)*** | |
| ***v.*** | ***)*** | ***Docket No. 03-251-P-S*** |
| | ***)*** | |
| ***ANDERSON/KELLY ASSOCIATES, INC. et al.,*** | ***)*** | |
| | ***)*** | |
| | ***)*** | |
| ***Defendants*** | ***)*** | |

***RECOMMENDED DECISION ON DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT***

The defendants, Anderson/Kelly Associates, Inc. ("A/KA") and Constance Anderson, move for summary judgment on Counts I, II, IV and V of the Third Amended Complaint in this action that was removed from the Maine Superior Court (York County). I recommend that the court grant the motion.

## I. Applicable Legal Standard

Summary judgment is appropriate only if the record shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "In this regard, 'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. By like token, 'genuine' means that 'the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party.'" *Navarro v. Pfizer Corp*., 261 F.3d 90, 93-94 (1st Cir. 2001) (quoting *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995)). The party moving for

summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor. *Nicolo v. Philip Morris, Inc.*, 201 F.3d 29, 33 (1st Cir. 2000). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, the nonmovant must "produce specific facts, in suitable evidentiary form, to establish the presence of a trialworthy issue." *Triangle Trading Co. v. Robroy Indus., Inc.*, 200 F.3d 1, 2 (1st Cir. 1999) (citation and internal punctuation omitted); Fed. R. Civ. P. 56(e). "As to any essential factual element of its claim on which the nonmovant would bear the burden of proof at trial, its failure to come forward with sufficient evidence to generate a trialworthy issue warrants summary judgment to the moving party." *In re Spigel*, 260 F.3d 27, 31 (1st Cir. 2001) (citation and internal punctuation omitted).

## II. Factual Background

The parties' statements of material facts, submitted pursuant to Local Rule 56, include the following undisputed material facts.[1]

On November 11, 1997 the plaintiff, a licensed seaman, was serving as master on the tug Gerard D which at the time was tending a dredge operation in Chesapeake Bay. Plaintiff's Additional Facts ("Plaintiff's SMF") (included in Plaintiff's Opposing Statement of Material Facts ("Plaintiff's Responsive SMF") (Docket No. 33) beginning at 13) ¶ 1; Reply to Plaintiff's Additional Statement of Material Facts

[1] The defendants have filed a document entitled "Defendants Anderson/Kelly Associates, Inc. and Constance Anderson's Reply Statement of Material Facts" (Docket No. 35) which includes purported "replies" to the plaintiff's responses to some of the paragraphs of the defendants' initial statement of material facts. Such a "reply" is not contemplated by Local Rule 56(d) and the defendants did not seek leave to file it. Accordingly, I will not consider those purported "replies." The portion of the document beginning at page 20 is an appropriate response to the additional material facts submitted by the plaintiff in opposition to the motion for partial summary judgment and will be considered.

("Defendants' Responsive SMF") (included in Defendants Anderson/Kelly Associates, Inc. and Constance Anderson's Reply Statement of Material Facts (Docket No. 35), beginning at 20) ¶ 1; Defendants Anderson/Kelly Associates, Inc. and Constance Anderson's Statement of Material Facts ("Defendants' SMF") (Docket No. 19) ¶ 1; Plaintiff's Responsive SMF ¶ 1. On that day, the plaintiff was notified that the Gerard D had been selected for a random drug test, requiring that urine samples be collected from all four crew members. Plaintiff's SMF ¶ 2; Defendants' Responsive SMF ¶ 2. Two other tugs were also to take part in the collection. *Id*. ¶ 3.

A/KA is a company that provides urine collection services for maritime companies to be used for drug screening. Defendants' SMF ¶ 2; Plaintiff's Responsive SMF ¶ 2. Anderson is the principal of A/KA. *Id*. ¶ 3. A/KA engages independent contractors to perform the specimen collections. *Id*. ¶ 4. On November 11, 1997 David Schrock, an independent contractor engaged by A/KA, collected urine samples from the plaintiff and other crew members on board the Gerard D and the crew members of the two other vessels. *Id*. ¶ 5. The crew members signed chain-of-custody forms. *Id*. ¶ 7. After leaving the collection site, Schrock contacted Anderson to inform her that he had failed to put social security numbers on some of the custody forms. Plaintiff's SMF ¶ 23; Defendants' Responsive SMF ¶ 23. Anderson told Schrock not to worry as this would be corrected by memorandum in the ordinary course of business. Defendants' SMF ¶ 13; Plaintiff's Responsive SMF ¶ 13. The testing laboratory requested that the missing social security numbers be provided on a standard form, known as the Urine Custody and Control Form Memorandum to Recover Missing Information. *Id*. ¶ 14. The memorandum was faxed to A/KA, completed with the necessary information, signed and returned to the laboratory. *Id*. ¶ 15. The memorandum included a statement verifying that the collector "collected, sealed and labeled the specimen in accordance with [Department of Transportation] regulations." Plaintiff's SMF ¶ 26; Defendants' Responsive SMF ¶ 26.

Erin Beller, an A/KA employee, filled in all of the information on the memorandum except the collector's signature. *Id*. ¶ 28. The memorandum was returned to the testing laboratory by A/KA on or after November 21, 1997 after purportedly having been signed by Schrock. *Id*. ¶ 29. The social security number and specimen identification number entered on the memorandum are correct. Defendants' SMF ¶ 19; Plaintiff's Responsive SMF ¶ 19.

Preparation and publication of corrective memoranda to supply missing information occurs with regularity. *Id*. ¶ 20.

The test results on the sample identified as the plaintiff's came back positive for marijuana. Plaintiff's SMF ¶ 31; Defendants' Responsive SMF ¶ 31. Nothing in the memorandum caused the testing laboratory to make any mistakes in its analysis which would result in a false positive. Defendants' SMF ¶ 22; Plaintiff's Responsive SMF ¶ 22. On February 27, 1998 the plaintiff was charged by the Coast Guard with the use of a dangerous drug. Plaintiff's SMF ¶ 32; Defendants' Responsive SMF ¶ 32. The Coast Guard initiated a hearing against the plaintiff in 1998 during which Anderson was called to testify by telephone. *Id*. ¶ 33; Defendants' SMF ¶ 23; Plaintiff's Responsive SMF ¶ 23. Anderson's testimony primarily concerned arranging the collection at issue, the origin of Schrock's signature on the memorandum, the preparation and transmittal of the memorandum, and the training provided to Schrock. Defendants' SMF ¶ 25; Plaintiff's Responsive SMF ¶ 25. Anderson testified that the signature on the memorandum was that of Schrock. Plaintiff's SMF ¶ 39; Defendants' Responsive SMF ¶ 39. As a result of the hearing, the plaintiff's license and maritime documents were revoked and he lost his employment as a seaman. Defendants' SMF ¶ 24; Plaintiff's Responsive SMF ¶ 24.

The plaintiff appealed the judgment and in 2002 successfully raised enough questions about the chain of custody to cause the order of license revocation to be vacated and the proceedings remanded for

further fact finding. *Id*. ¶ 31. On September 25, 2002 Schrock provided the Coast Guard with a letter stating that the signature on the memorandum was "definitely" not his signature. Plaintiff's SMF ¶ 45; Defendants' Responsive SMF ¶ 45. The Coast Guard elected not to pursue the matter and withdrew its charges against the plaintiff. Defendants' SMF ¶ 33; Plaintiff's Responsive SMF ¶ 33. The plaintiff's license and maritime documents were subsequently reinstated as inactive. *Id*. ¶ 34; Plaintiff's SMF ¶ 46; Defendants' Responsive SMF ¶ 46.

## III. Discussion

The defendants seek summary judgment on four of the five claims asserted in the third amended complaint. Count I alleges publication of an injurious falsehood, Count II alleges intentional infliction of emotional distress, Count IV alleges negligent infliction of emotional distress, and Count V alleges perjury. Third Amended Complaint, etc. (included in Docket No. 7) ¶¶ 41-53, 62-67.

### A. Count I

The plaintiff invokes section 623A of the Restatement of Torts (Second) as the basis for his claim in Count I that the defendants are liable for publication of an injurious falsehood, specifically the memorandum. *Id*. at 7. That section of the Restatement has not been adopted by the Maine Law Court in a reported decision. The parties assume that Maine will adopt the section if and when the question is presented. It provides:

> One who publishes a false statement harmful to the interests of another is subject to liability for pecuniary loss resulting to the other if
>
> (a) he intends for publication of the statement to result in harm to interests of the other having a pecuniary value, or either recognizes or should recognize that it is likely to do so, and
>
> (b) he knows that the statement is false or acts in reckless disregard of its truth or falsity.

Restatement (Second) of Torts § 623A (1977).

The defendants contend that publication of the memorandum was privileged and, in the alternative, that the plaintiff cannot establish any of the elements of the Restatement definition of the tort. Defendants Anderson/Kelly Associates, Inc. and Constance Anderson's Motion for Partial Summary Judgment, etc. ("Motion") (Docket No. 18) at 6-11. The plaintiff does not respond to the first argument, which is dispositive. The only evidence in the summary judgment record that may reasonably be construed to refer to publication of the memorandum, some of which is disputed, deals with the testimony of Anderson at the Coast Guard hearing. Defendants' SMF ¶¶ 25, 27, 29; Plaintiff's SMF ¶¶ 34, 38-42. The Restatement also provides that a party is "absolutely privileged to publish defamatory matter concerning another . . . during the course and as part of[] a judicial proceeding in which he participates, if the matter has some relation to the proceeding." Restatement (Second) of Torts § 587 (1977). This privilege specifically applies to the publication of an injurious falsehood. *Id*. § 635. Sections 587and 635 have been adopted in Maine. *Raymond v. Lyden*, 728 A.2d 124, 126 & n.7 (Me. 1999). Because the only evidence in the summary judgment record is that the allegedly injurious falsehood was published, if at all, solely during the Coast Guard hearing, a judicial proceeding, *Grace v. Keystone Shipping Co.*, 805 F. Supp. 436, 441 (E.D. Tex. 1992), the publication was absolutely privileged and the defendants are entitled to summary judgment on Count I.

**B. Count II**

Count II alleges intentional infliction of emotional distress. Third Amended Complaint ¶¶ 49-53. The plaintiff states that the defendants did this by "intentionally providing the false Memorandum to" the testing laboratory and "by providing false testimony in the Coast Guard hearing." Plaintiff's Opposition to Defendants' Motion for Summary Judgment ("Opposition") (Docket No. 32) at 13.

Under Maine law the tort of intentional infliction of emotional distress consists of the following elements:

> (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct;
>
> (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community;
>
> (3) the actions of the defendant caused the plaintiff's emotional distress; and
>
> (4) the emotional distress suffered by the plaintiff was so severe that no reasonable man could be expected to endure it.

*Maine Mut. Fire Ins. Co. v. Gervais*, 715 A.2d 938, 941 (Me. 1998) (citation omitted). In this context, "a person may be said to act recklessly if he knows or has reason to know of facts giving rise to a high degree of risk of harm to another and yet deliberately acts, or fails to act, in conscious disregard of that risk." *Id*. This court "properly may determine, as a matter of law, whether undisputed (or assumed) facts suffice to state a claim for intentional infliction of emotional distress." *LaChappelle v. Berkshire Life Ins. Co.*, 142 F.3d 507, 511 (1st Cir. 1998) (construing Maine law).

The defendants contend, *inter alia*, that none of the acts or failures to act alleged by the plaintiff could reasonably be construed to establish the second element of the tort. Motion at 12. I agree. The plaintiff identifies the actions at issue as "forward[ing] a forged Memorandum" to the testing laboratory and then "[lying] about the signature in a proceeding that resulted in Mr. Sengel losing his career." Opposition at 14. The plaintiff has offered no evidence that would allow a reasonable factfinder to conclude that, at the time the memorandum was forwarded, the defendants knew or should have known that the information provided to them by Shrock and recorded on the memorandum was incorrect in any way. Even assuming

that the defendants knew at the time that the signature on the memorandum was not placed on it by Shrock, that fact does not demonstrate conduct that could "exceed all bounds of decency" under the circumstances on the showing made. Nor does Anderson's testimony at the Coast Guard hearing that the signature actually was that of Schrock rise to that level. Contrary to the plaintiff's assertion, Plaintiff's Responsive SMF ¶ 57, the fact that the evidence in the summary judgment record may be interpreted to show that the defendants knew that the signature was not Schrock's does not and cannot, standing alone, give rise to the additional inference that they believed or knew that the remainder of the information entered onto the form was not true. The plaintiff has submitted no evidence that would allow a reasonable factfinder to draw that conclusion. Indeed, he has effectively conceded that all of the information on the form, other than the collector's signature, was correct. Defendants' SMF ¶ 18; Plaintiff's Responsive SMF ¶ 18. At most, this evidence would allow the drawing of a reasonable inference that the defendants knew that the signature on the form was not that of Schrock but did not believe that that fact made any difference, given that the substantive information on the form was correct. This cannot reasonably be construed as conduct that "exceed[ed] all bounds of decency."

The defendants are entitled to summary judgment on Count II.

**C. Count IV**

Count IV alleges negligent infliction of emotional distress. Third Amended Complaint ¶¶ 62-66. With respect to this count, the defendants contend that they had no duty to the plaintiff to avoid acting negligently. Motion at 15. Under Maine law, "[o]nly where a particular duty based upon the unique relationship of the parties has been established may a defendant be held responsible . . . for harming the emotional well-being of another." *Bryan R. v. Watchtower Bible & Tract Soc. of New York, Inc.*, 738

A.2d 839, 848 (Me. 1999).[2] "The plaintiff must . . . show that public policy favors the recognition of a legal duty to refrain from inflicting emotional injury, based upon plaintiff's status or the relationship between the parties." *Veilleux v. National Broad. Co.*, 206 F.3d 92, 130 (1st Cir. 2000). The First Circuit has advised federal courts to be "reluctant to expand this relatively undeveloped doctrine beyond the narrow categories addressed thus far" by the Maine Law Court. *Id*. at 131.

The plaintiff contends that a special relationship existed between him and the defendants because Shrock, the independent contractor hired by the defendants to collect the urine samples, provided services "not dissimilar to some services provided by medical professionals," and Maine has recognized such a relationship between patients and physicians. Opposition at 17. The Law Court recognized such a relationship in *Bolton v. Caine*, 584 A.2d 615, 618 (Me. 1990), but to extend the physician-patient relationship by analogy to that between a transportation worker and the company that hired an independent contractor to collect a urine sample from him for purposes of allowing a tort recovery would be to engage in precisely the kind of expansion of state law disfavored by the First Circuit. I conclude that the court should decline the plaintiff's invitation to do so.

The defendants are entitled to summary judgment on Count IV.

**D. Count V**

Count V alleges perjury. Third Amended Complaint ¶¶ 65-67. This is a statutory cause of action in Maine.

[2] Maine law also allows a claim for negligent infliction of emotional distress to proceed where the wrongdoer has committed another tort, but only when the separate tort does not allow a plaintiff to recover for emotional suffering. *Curtis v. Porter*, 784 A.2d 18, 26 (Me. 2001). That rule does not apply in this case where Count III of the amended complaint, on which the defendants do not seek summary judgment, alleges negligence, Third Amended Complaint ¶¶ 54-61, a claim on which the plaintiff may recover for emotional suffering.

> When a judgment has been obtained against a party by the perjury of a witness introduced at the trial by the adverse party, the injured party may, within 3 years after such judgment or after final disposition of any motion for relief from the judgment, bring an action against such adverse party, or any perjured witness or confederate in the perjury, to recover the damages sustained by him by reason of such perjury; and the judgment in the former action is no bar thereto.

14 M.R.S.A. § 870.[3] In an action brought under this statute, the burden is on the plaintiff to show that it is highly probable that the witness both lied and knew that his testimony was false. *Spickler v. Greenberg*, 644 A.2d 469, 471 (Me. 1994). The plaintiff must present evidence that meets the "clear and convincing" standard of proof. *Id.* He must also prove perjury by more than circumstantial evidence. "There must be in addition . . . at least one witness who provides direct positive evidence of such fact as render defendant's statement of the facts a false statement." *State v. Farrington*, 411 A.2d 396, 401 (Me. 1980).

Here, the plaintiff contends that the perjury consisted of Anderson's testimony that the signature on the memorandum was that of Shrock. Opposition at 19. The defendants argue that this testimony did not provide the basis for the Coast Guard's initial decision, so that the plaintiff cannot show that the decision was "obtained by" this testimony, and that the testimony was either true or not known by Anderson to be false. Motion at 16-18. The plaintiff asserts in conclusory fashion that "[t]he decision to revoke Mr. Sengel's Mariner Documents was based at least in part on this testimony," Opposition at 19, but cites no evidence on this point. Rather, he adds the equally conclusory assertion that "[t]he Coast Guard would certainly not have revoked Mr. Sengel's Mariner Documents had Ms. Anderson testified that Mr. Schrock did not sign the Memorandum." *Id*. at 20. I am hard-pressed to see why this is so, particularly when Shrock himself and a reviewer both testified that he had properly collected the sample at issue, Defendants'

[3] The statute does not define the word "perjury." It is defined in Maine criminal law as "a false material statement under oath . . . [which the witness] does not believe . . . to be true." 17-A M.R.S.A. § 451(1)(A).

SMF ¶ 29,[4] but it is not necessary to reach this issue because I agree with the defendants that the plaintiff has not presented clear and convincing evidence that Anderson knew that her testimony about the signature was false. The plaintiff relies in this regard on the assertion that "Mr. Schrock testified in his deposition that he did not sign the Memorandum." *Id*. at 19. However, this factual assertion is not included in his statement of material facts and is not properly before the court. The plaintiff has provided evidence that Shrock "provided the Coast Guard with a letter stating that the signature on the [memorandum] was 'definitely' not his signature." Plaintiff's SMF ¶ 45. Assuming *arguendo* that this evidence would meet the "clear and convincing" standard, it does not allow the drawing of an inference that Anderson knew at the time she testified that the signature was not that of Shrock.

The plaintiff offers as other evidence allowing the drawing of such an inference at the clear and convincing level the asserted facts that the signature on the memorandum does not match that of the Department of Transportation Drug Testing Custody and Control Form which he filled out during the collection of the samples at issue; that Anderson "has provided contradictory testimony as to whether she knew the Memorandum was faxed to Mr. Schrock," presumably for his signature, about whether she or anyone else inspected the memorandum before sending it to the testing laboratory and about how she verified Schrock's signature prior to testifying at the Coast Guard hearing; and that the "Memorandum itself indicates it was never sent to Mr. Schrock." Opposition at 19. Absent any evidence that Anderson compared the two signature before testifying, the fact that the signatures on the two documents appeared different provides no support for the plaintiff's position. The allegedly contradictory testimony about

[4] The plaintiff purports to deny this paragraph of the defendants' statement of material facts, Plaintiff's Responsive SMF ¶ 29, but his denial is not responsive to this portion of the paragraph, which is supported by the citation given to the summary judgment record. Decision and Order, *United States v. Merchant Mainer's License No 037890*, Docket No. 01-0022-PAF-98POR, Department of Transportation, United States Coast Guard (Tab 10 to Defendants' SMF), at 7, 9-13.

whether the memorandum was faxed to Shrock, Plaintiff's SMF ¶ 34, was corrected or clarified by Anderson at the Coast Guard hearing, Defendants' Responsive SMF ¶34 & Tab 3 to Defendants' Responsive SMF at 129-30, and therefore cannot provide the basis for a perjury claim, *see* 17-A M.R.S.A. § 451(3).

The allegation that Anderson gave contradictory testimony about whether anyone inspected the memorandum before sending it to the testing laboratory is based on paragraph 38 of the plaintiff's statement of material facts. Opposition at 6. However, the references given in support of that paragraph reveal that Anderson only testified in this regard at the hearing by answering "Yes" to the question "And did you have occasion to look at this document at that point in time?," Exh. 2 to Affidavit of William J. Sengel, etc. ("Sengal Aff.") (Exh. 1 to Plaintiff's Responsive SMF) at 107, and only testified at her deposition that she didn't remember whether she saw the memorandum before it was sent back to the lab, Exh. [4] to Plaintiff's Responsive SMF, at 60. This is not necessarily a contradiction at all, does not refer to an "inspection" of the memorandum, and cannot bear the evidentiary weight assigned to it by the plaintiff. It cannot reasonably be construed as circumstantial evidence that Anderson knew that her testimony that the signature on the memorandum was that of Shrock was false. The same is true of the plaintiff's assertion that Anderson provided contradictory testimony about how she verified Shrock's signature before testifying at the hearing. This allegation is apparently based on paragraphs 39 and 40 of the plaintiff's statement of material facts. Opposition at 6. However, the citations to the record given in support of those paragraphs reveal that Anderson did not make any statement at the hearing about "how she verified Shrock's signature before testifying at the hearing." Rather, she was asked by the plaintiff whether she had Shrock's signature on file and responded that she did. Exh. 2 to Sengel Aff. at 128. This testimony is not at all inconsistent with her testimony at deposition, when she was asked what she had done to verify Shrock's signature before

testifying at the Coast Guard hearing and responded that she went through some check endorsements. Exhibit [4] to Plaintiff's Responsive SMF at 70.

Finally, the assertion the "the Memorandum itself indicates it was never sent to Mr. Shrock," based on paragraph 37 of the plaintiff's statement of material facts, Opposition at 6, 19, draws an unsupportable inference from the facts. The paragraph itself states only that "[f]ax stamps on the Memorandum suggest that it was not faxed to or from Mr. Schrock," Plaintiff's SMF ¶ 37, a far less certain statement that the one included in the plaintiff's argument. The document itself, Exh. 3 to the Sengel Affidavit, does not and cannot prove the negative assertion that it was never sent to a particular person. The deposition testimony of Anderson cited in support of this paragraph merely establishes that a fax number other than that of A/KA and the testing laboratory appears on the copy of the memorandum used as an exhibit at the deposition. Exh. [4] to Plaintiff's Responsive SMF at 61-62. The deposition testimony of Shrock cited in support of this paragraph suggests that the document was in fact faxed to his place of work. Exh. [7] to Plaintiff's Responsive SMF at 115-17. In addition, the defendants have submitted evidence that the memorandum was faxed at least three times, Defendants' Responsive SMF ¶ 37, one more time than was necessary to get the document from the laboratory to A/KA and back again. This evidence is also insufficient as a matter of law to allow a reasonable factfinder to conclude by clear and convincing evidence that Anderson knew that her verification of Shrock's signature on the memorandum at the Coast Guard hearing was false.

The defendants are accordingly entitled to summary judgment on Count V.

## IV. Conclusion

For the foregoing reasons, I recommend that the defendants' motion for partial summary judgment be **GRANTED**.

***NOTICE***

***A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.***

***Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.***

Dated this 14th day of July, 2004.

/s/ David M. Cohen
David M. Cohen
United States Magistrate Judge

**Plaintiff**

**----------**

**WILLIAM J SENGEL** represented by

**THEODORE A. SMALL**
BERNSTEIN, SHUR, SAWYER, & NELSON
100 MIDDLE STREET
P.O. BOX 9729
PORTLAND, ME 04104-5029
207-774-1200
Email: tsmall@bssn.com

**TODD S. HOLBROOK**
BERNSTEIN, SHUR, SAWYER, & NELSON
100 MIDDLE STREET
P.O. BOX 9729

PORTLAND, ME 04104-5029
207-774-1200
Fax : 207-774-1127
Email: tholbrook@bssn.com

V.

**Defendant**

**----------**

**ANDERSON/KELLY ASSOCIATES INC** represented by **ANTHONY D. PELLEGRINI**
RUDMAN & WINCHELL
84 HARLOW STREET
P.O. BOX 1401
BANGOR, ME 04401
(207) 947-4501
Email: apellegrini@rudman-winchell.com

**BRUCE C. MALLONEE**
RUDMAN & WINCHELL
84 HARLOW STREET
P.O. BOX 1401
BANGOR, ME 04401
(207) 947-4501
Email: bmallonee@rudman-winchell.com

**CONSTANCE ANDERSON** represented by **ANTHONY D. PELLEGRINI**
(See above for address)